



United States Government
NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

July 27, 2010

Lester A. Heltzer, Executive Secretary e-filed
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

Re: Resistflame Acquisition Company, Inc. f/k/a
Resistflame Kiesling & Hess Finishing
CompanyKane Steel Company
Cases 4-CA-36334

Dear Executive Secretary Heltzer:

Enclosed please find an original and seven (7) copies of Counsel for the General Counsel's Motion for Default Judgment (including attachments thereto) in the above-referenced cases.

Copies of the above Motion have been sent this day on the persons below by first class mail, and by e-mail. The hearing in this matter is scheduled to begin on October 6, 2010.

Very truly yours,


MARGARITA NAVARRO-RIVERA
Counsel for the General Counsel

cc:

Thomas Applegate, CEO, Resistflame Acquisition Company, Inc., f/k/a Resistflame Kiesling & Hess Finishing Company, 300 West Bristol Street, Philadelphia, PA 19140

Thomas Applegate, CEO, Resistflame Acquisition Company, Inc., f/k/a Resistflame Kiesling & Hess Finishing Company, 7115 Miami Avenue, P.O. Box 43196, Cincinnati, OH 45243
(tom@resistflameco.com)

Bernard N. Katz, Esquire, Claiborne S. Newlin, Esquire, North American Building, 13th Floor, Floor, Philadelphia, PA 19107 (csn@meranzekatz.com)

MNR/tsl

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

RESISTFLAME ACQUISITION COMPANY,
INC. f/k/a RESISTFLAME KIESLING & HESS
FINISHING COMPANY

and

Case 4-CA-36334

UNITE HERE!, PHILADELPHIA JOINT
BOARD, AFL-CIO, CLC

MOTION FOR DEFAULT JUDGMENT

Counsel for the Acting General Counsel, pursuant to Sections 102.24 and 102.56 of the Rules and Regulations of the National Labor Relations Board, herein called the Rules and the Board, respectively, hereby moves for Default Judgment and requests the Board to transfer, and continue before the Board, the Compliance Specification issued herein and the proceedings related thereto. In support of the Motion, Counsel for the Acting General Counsel avers as follows:

1. (a) On March 6, 2009, the Board issued its Decision and Order in the above-captioned case (353 NLRB No. 107). On January 22, 2010 the United States Court of Appeals for the Third Circuit entered its Judgment Enforcing An Order of the National Labor Relations Board (09-2819). Copies of the Court's Judgment and of the underlying Board Decision and Order are attached hereto as Exhibits 1 and 2, and made a part hereof. The Board's Order required Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess Finishing

Company, herein called Respondent, inter alia, to take the following affirmative action necessary to effectuate the policies of the Act:

(1) Make all delinquent Welfare and Security Fund contributions on behalf of the unit employees that have not been paid since March 2008, including any additional amounts due the funds, in the manner set forth in the remedy section of the Board's Decision.

(2) Make unit employees whole for any expenses ensuing from the Respondent's failure to make the required Welfare and Security Fund contributions, with interest, in the manner set forth in the remedy section of the Board's Decision.

(3) Remit to the Union all dues it deducted from employees' pay pursuant to valid dues-checkoff authorizations prior to the expiration of the collective-bargaining agreement, in the manner set forth in the remedy section of the Board's Decision.

(4) Remit to the Union, or to the employees, as determined at the compliance stage of this proceeding, all dues it deducted from employees' pay after the expiration of the collective-bargaining agreement, in the manner set forth in the remedy section the Board's Decision.

2. On June 25, 2010, the Regional Director issued a Compliance Specification and Notice of Hearing, directing Respondent, inter alia, to file its Answer to the Compliance Specification within 21 days of the service thereof (i.e. by July 16, 2010), as required by Section 102.56 of the Rules, and scheduling a hearing to be held on October 6, 2010. Copies of the Compliance Specification and Notice of Hearing and the affidavit of service thereof are attached hereto and marked as Exhibits 3 and 4. The Postal Service Domestic Return Receipt showing service upon Respondent at its business address in Cincinnati, Ohio has not been received, nor has the copy sent to Respondent at the Cincinnati address been returned as unclaimed.

3. The time for filing an answer under the Rules expired on July 16, 2010.

4. By letter dated July 16, 2010, and sent to Respondent by regular first class, by facsimile transmission, and by e-mail attachment, Respondent was advised that its Answer was overdue and that a Motion for Default Judgment would be filed if Respondent's Answer was not received by July 23, 2010. A copy of this letter, with attachments, is attached hereto as Exhibit 5.

5. On July 16, 2010, Respondent, having received the July 23, letter, telephoned the Regional Office. As a result of the ensuing conversation, and as a courtesy, an additional copy of the Compliance Specification was e-mailed to Respondent as an e-mail attachment. A copy of the e-mail (without the Attached Compliance Specification) is attached hereto as Exhibit 6.


6. Respondent has failed to file an Answer to the Compliance Specification.

7. It is therefore submitted that Respondent has failed to comply with the Rules concerning the filing of an Answer and, accordingly, the allegations of the Compliance Specification should be deemed to be found to be true pursuant to Section 102.56(c) of the Rules.

8. **NOW THEREFORE**, the undersigned Counsel for the Acting General Counsel moves that: (1) the Compliance Specification in this proceeding be transferred to and continued before the Board; (2) the Board find the allegations of the Compliance Specification to be true; (3) the Board issue a Supplemental Decision and Order based on such findings and direct Respondent, inter alia, to pay the amounts set forth in the Exhibits appended to the Compliance

Specification,¹ plus interest; and (4) the Board grant such other and further relief as may be appropriate.

Signed at Philadelphia, Pennsylvania this 27th day of July, 2010.


MARGARITA NAVARRO-RIVERA
Counsel for the Acting General Counsel
National Labor Relations Board
Fourth Region
(215) 597-7657

¹ As alleged in the Compliance Specification (see paragraphs 1(b) and 1(c)), Respondent made Welfare and Security Fund contributions on the 10th day of each month following the month in which any bargaining unit employee worked. Respondent ceased operations at the facility involved herein in June 2009. Exhibit A shows the amounts of contributions owing based on work performed as late as June 2009. With respect to Dues Payments, as reflected in paragraph 2(g) and Exhibit B of the Compliance Specification, Respondent's obligation to remit dues to the Union ended in November 2008, when Respondent ceased deducting any dues from the pay of bargaining unit employees.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

December 17, 2009
Panel No. CCO-044

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

RESISTFLAME ACQUISITION COMPANY,
INC. F/K/A RESISTFLAME KIESLING
& HESS FINISHING COMPANY, INC.

Respondent

No. 09-2819

Board Case No.
4-CA-36334

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

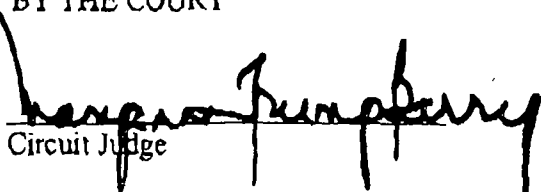
Before: BARRY, FISHER and VAN ANTWERPEN, Circuit Judges.

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess Finishing Company, Inc., its officers, agents, successors, and assigns, enforcing its order dated March 6, 2009, in Case No. 4-CA-36334, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess Finishing Company, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

BY THE COURT


Circuit Judge

DATED: January 22, 2010

cc: Linda J. Dreeben, Esq.

NATIONAL LABOR RELATIONS BOARD

v.

RESISTFLAME ACQUISITION COMPANY, INC. F/K/A RESISTFLAME
KIESLING & HESS FINISHING COMPANY, INC.

ORDER

Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess
Finishing Company, Inc., Philadelphia, Pennsylvania, its officers, agents,
successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to bargain collectively and in good faith with
UNITE HERE!, Philadelphia Joint Board, AFL-CIO, CLC, as the
exclusive collective-bargaining representative of the following unit:

All production employees at the Philadelphia facility, excluding clerical
and office employees, executives, supervisors, administrative,
professional, confidential employees and guards, as defined in the Act:

- (b) Refusing to furnish, and delaying in furnishing, requested information
that is necessary for and relevant to the Union's performance of its
duties as the exclusive collective-bargaining representative of the unit
employees.
- (c) Failing and refusing to remit contributions to the Welfare and Security
Fund on behalf of unit employees, as required by the collective-
bargaining agreement.
- (d) Failing and refusing to remit to the Union dues checked off pursuant to
valid checkoff authorizations prior to the expiration of the collective-
bargaining agreement.
- (e) Failing to remit to the Union dues checked off after the expiration of the
collective-bargaining agreement, if the dues were deducted pursuant to
employees' valid, unexpired, and unrevoked checkoff authorizations, or
failing to return to the employees dues checked off after the expiration
of the collective-bargaining agreement, if the dues were deducted

pursuant to employees' checkoff authorizations which had expired or been revoked.

- (f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees with respect to wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement.
 - (b) Promptly provide the Union with information pertaining to the costs to be borne by unit employees under the health plans that it claimed to be considering proposing during collective bargaining.
 - (c) Make all delinquent Welfare and Security Fund contributions on behalf of the unit employees that have not been paid since March 2008, including any additional amounts due the funds, in the manner set forth in the remedy section of this decision.
 - (d) Make unit employees whole for any expenses ensuing from the Respondent's failure to make the required Welfare and Security Fund contributions, with interest, in the manner set forth in the remedy section of this decision.
 - (e) Remit to the Union all dues it deducted from employees' pay pursuant to valid dues-checkoff authorizations prior to the expiration of the collective-bargaining agreement, in the manner set forth in the remedy section of the decision.
 - (f) Remit to the Union, or to the employees, as determined at the compliance stage of this proceeding, all dues it deducted from employees' pay after the expiration of the collective-bargaining agreement, in the manner set forth in the remedy section of the decision.
 - (g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- (h) Within 14 days after service by the Region, post at its facilities in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 2008.
- (i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with **UNITE HERE!**, Philadelphia Joint Board, AFL-CIO, CLC, as the exclusive collective-bargaining representative of the employees in the following unit:

All production employees at our Philadelphia facility, excluding clerical and office employees, executives, supervisors, administrative, professional, confidential employees and guards, as defined in the Act.

WE WILL NOT refuse to furnish, or delay in furnishing, information that is necessary for and relevant to the performance of the Union's role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail and refuse to remit contributions to the Welfare and Security Fund on behalf of unit employees, as required by the collective-bargaining agreement.

WE WILL NOT fail and refuse to remit to the Union dues we deducted pursuant to valid checkoff authorizations prior to the expiration of the collective-bargaining agreement.

WE WILL NOT fail to remit to the Union dues checked off after the expiration of the collective-bargaining agreement, if the dues were deducted pursuant to the employees' valid, unexpired, and unrevoked checkoff authorizations, or fail to return to the employees dues checked off after the expiration of the collective-

bargaining agreement, if the dues were deducted pursuant to employees' checkoff authorizations which had expired or been revoked.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL promptly furnish to the Union information pertaining to the costs to be borne by employees under the health plans that we considered proposing during collective bargaining.

WE WILL make all delinquent Welfare and Security Fund contributions on behalf of the unit employees that have not been paid since March 2008, including any additional amounts due the funds.

WE WILL make unit employees whole for any expenses ensuing from our failure to make the required Welfare and Security Fund contributions, with interest.

WE WILL remit to the Union all dues we deducted from the employees' pay pursuant to valid dues-checkoff authorizations prior to the expiration of the collective-bargaining agreement, with interest.

WE WILL remit to the Union, or to the employees, as determined at the compliance stage of this proceeding, all dues we deducted from employees' pay after the expiration of the collective-bargaining agreement, with interest.

RESISTFLAME ACQUISITION CO. F/K/A RESISTFLAME
KIESLING & HESS FINISHING CO.

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Resistflame Acquisition Company Inc. f/k/a Resistflame Kiesling & Hess Finishing Company and UNITE HERE!, Philadelphia Joint Board, AFL-CIO, CLC. Case 4-CA-36334

March 6, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by the Union on September 11, October 3 and 15, 2008, respectively, the General Counsel issued the complaint on December 9, 2008, against Resistflame Acquisition Company, Inc., f/k/a Resistflame Kiesling & Hess Finishing Company, the Respondent, alleging that it had violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On January 15, 2009, the General Counsel filed a Motion for Default Judgment with the Board. On January 21, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment¹

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that the answer must be received by the Regional Office on or before December 23, 2008, and that, if no answer was filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 23, 2008, notified the Respondent that unless an answer was received by December 30, 2008, a motion for default judgment would be filed. On Decem-

ber 29, 2008, because it was unclear whether the Respondent had been served with the complaint, a second letter was sent notifying the Respondent that if an answer was filed by January 12, 2009, a motion for default judgment would not be filed.² This letter included a copy of the complaint and notice of hearing and the portions of the Board's Rules concerning the filing of an answer. The Respondent neither filed an answer to the complaint nor requested an extension of time to do so.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation with an office and shop in Philadelphia, Pennsylvania (the Philadelphia facility), has been engaged in the business of textile finishing.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at the Philadelphia facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that, at all material times, UNITE HERE!, Philadelphia Joint Board, AFL-CIO, CLC, the Union, has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Thomas Applegate—President and Chief Executive Officer

Timothy Redmond—General Manager

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collec-

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. Sec. 3(b) of the Act

² The motion for default judgment refers to the second letter as having been sent on December 30, 2009. However, the letter, which is attached to the motion as Exh. 11, is dated December 29, 2009. Overnight mail receipts, showing service of the letter on December 29, 2008 and indicating that a signature was required for delivery, are attached to the motion as Exh. 13. There is no indication that delivery was unsuccessful.

tive bargaining within the meaning of Section 9(b) of the Act:

All production employees at the Philadelphia facility, excluding clerical and office employees, executives, supervisors, administrative, professional, confidential employees and guards, as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements. The most recent of these agreements (the agreement) was effective by its terms from June 1, 2005, through May 31, 2008, and its terms and conditions of employment have been adopted by the Respondent.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

From about April 22 to about July 22, 2008, the Respondent and the Union met for the purposes of collective bargaining with respect to the wages, hours, and other terms and conditions of employment of the unit.

About June 19, 2008, the Union verbally requested that the Respondent furnish the Union with the details of health plans the Respondent claimed to be considering proposing for the unit.

About July 18, 2008, in a meeting with the Respondent, the Union verbally requested that the Respondent furnish the Union with the details of "different" health plans the Respondent claimed to be considering proposing for the unit.

About July 22, 2008, the Union, by telephone, reiterated its request for all information pertaining to health plans the Respondent claimed to be considering proposing for the unit, including copies of the plans and the costs to be borne by unit employees.

The Union reiterated its requests for the information referred to above, verbally on about September 25, 2008, orally, and by e-mail to Thomas Applegate on about August 7, 15, 18, and 25, 2008.

The information requested by the Union, as described above, is necessary for and relevant to the Union's performance of its duties as the exclusive bargaining representative of the unit.

During the period of collective bargaining described above, the Respondent engaged in the following conduct:

(1) From about June 19 until about August 18, 2008, failed to furnish the Union with the requested information referred to above, except for the costs to be borne by unit employees under the health plans the Respondent claimed to be considering proposing to the Union, which

costs the Respondent has failed to furnish to the Union since about June 19, 2008.

(2) During the following periods of time, failed to meet at reasonable times at the request of the Union for the purpose of reaching a successor collective-bargaining agreement: from May 9–June 19, 2008; from June 30–July 18, 2008; and after July 18, 2008.

(3) Since about July 18, 2008, failed and refused to respond to the Union's health-insurance proposals and to provide the Union with a counterproposal on this issue.

(4) Since about March 2008, has failed and refused to remit required contributions to the Welfare and Security Fund on behalf of unit employees, as required by the agreement.

(5) From about March 12 until about May 31, 2008, failed to remit checked off dues to the Union, pursuant to the dues-checkoff provision in article 23 of the agreement, although the Respondent deducted the dues from unit employees' wages.

(6) Since about June 1, 2008, after the expiration of the agreement, has failed and refused to remit dues deducted from the wages of unit employees to the Union.

The subjects set forth above in paragraphs (4) and (5) relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above in paragraphs (4) and (5) without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct, and prior to May 31, 2008, without the Union's consent.

CONCLUSIONS OF LAW

1. By the acts and conduct described above in paragraphs (1) through (5), the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

2. By the conduct described above in paragraph (6), the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.³

³ In Chairman Liebman's view, dues-checkoff provisions, like other contractually established terms and conditions of employment, survive the expiration of an agreement and continue until the parties reach a new agreement or a valid impasse. See her dissenting opinion in *Hacienda Resort Hotel & Casino*, 351 NLRB 504 (2007), revd. sub nom. *Local Joint Executive Bd v NLRB*, 540 F.3d 1072 (9th Cir. 2008). Pursuant to that view, she normally would find that the Respondent's post-expiration failure to remit dues violated Sec. 8(a)(5). For institu-

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to provide to the Union information pertaining to the costs to be borne by unit employees under the health plans the Respondent claimed to be considering proposing, we shall specifically order the Respondent to provide that information.

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing since about July 18, 2008, to meet at reasonable times and bargain with the Union for the purpose of reaching a successor collective-bargaining agreement and by failing to respond to the Union's health insurance proposals, we shall order the Respondent, on request, to meet and bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit, and, if an understanding is reached, to embody the understanding in a signed agreement.

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing to remit contributions to the Welfare and Security Fund on behalf of unit employees since March 2008, as required by the collective-bargaining agreement, we shall order the Respondent to make whole its unit employees by making all such delinquent fund contributions on behalf of unit employees that have not been made since that date, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).⁴ We shall also order the Respondent to reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed with interest as interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing, from about March 12 until

about May 31, 2008, to remit to the Union the dues that were deducted from employees' wages, as required by article 23 of the collective-bargaining agreement, we shall order the Respondent to forward the deducted dues to the Union as required by the agreement, with interest, as prescribed in *New Horizons for the Retarded*, supra. In addition, having found that the Respondent has violated Section 8(a)(1) by retaining for itself dues deducted from the pay of unit employees after the expiration of the collective-bargaining agreement, the Respondent shall be ordered to remit those sums to the Union, provided that the dues were deducted pursuant to valid, unexpired, and unrevoked dues-checkoff authorizations. If the dues were deducted pursuant to checkoff authorizations which had expired or were revoked, the Respondent shall return the withheld dues to the employees, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess Finishing Company, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with UNITE HERE!, Philadelphia Joint Board, AFL-CIO, CLC, as the exclusive collective-bargaining representative of the following unit:

All production employees at the Philadelphia facility, excluding clerical and office employees, executives, supervisors, administrative, professional, confidential employees and guards, as defined in the Act.

(b) Refusing to furnish, and delaying in furnishing, requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(c) Failing and refusing to remit contributions to the Welfare and Security Fund on behalf of unit employees, as required by the collective-bargaining agreement.

(d) Failing and refusing to remit to the Union dues checked off pursuant to valid checkoff authorizations prior to the expiration of the collective-bargaining agreement.

(e) Failing to remit to the Union dues checked off after the expiration of the collective-bargaining agreement, if the dues were deducted pursuant to employees' valid, unexpired, and unrevoked checkoff authorizations, or failing to return to the employees dues checked off after the expiration of the collective-bargaining agreement, if

tronal reasons, however, she agrees to apply the extant precedent in *Hacienda* and find only a violation of Sec. 8(a)(1).

⁴ To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions to the funds during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to any amount that the Respondent otherwise owes the funds.

the dues were deducted pursuant to employees' checkoff authorizations which had expired or been revoked.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees with respect to wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Promptly provide the Union with information pertaining to the costs to be borne by unit employees under the health plans that it claimed to be considering proposing during collective bargaining.

(c) Make all delinquent Welfare and Security Fund contributions on behalf of the unit employees that have not been paid since March 2008, including any additional amounts due the funds, in the manner set forth in the remedy section of this decision.

(d) Make unit employees whole for any expenses ensuing from the Respondent's failure to make the required Welfare and Security Fund contributions, with interest, in the manner set forth in the remedy section of this decision.

(e) Remit to the Union all dues it deducted from employees' pay pursuant to valid dues-checkoff authorizations prior to the expiration of the collective-bargaining agreement, in the manner set forth in the remedy section of the decision.

(f) Remit to the Union, or to the employees, as determined at the compliance stage of this proceeding, all dues it deducted from employees' pay after the expiration of the collective-bargaining agreement, in the manner set forth in the remedy section of the decision.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facilities in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."⁵ Copies of the no-

tice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 2008.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 6, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with UNITE HERE!, Philadelphia Joint Board, AFL-CIO, CLC, as the exclusive collective-

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judge-

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

bargaining representative of the employees in the following unit:

All production employees at our Philadelphia facility, excluding clerical and office employees, executives, supervisors, administrative, professional, confidential employees and guards, as defined in the Act.

WE WILL NOT refuse to furnish, or delay in furnishing, information that is necessary for and relevant to the performance of the Union's role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail and refuse to remit contributions to the Welfare and Security Fund on behalf of unit employees, as required by the collective-bargaining agreement.

WE WILL NOT fail and refuse to remit to the Union dues we deducted pursuant to valid checkoff authorizations prior to the expiration of the collective-bargaining agreement.

WE WILL NOT fail to remit to the Union dues checked off after the expiration of the collective-bargaining agreement, if the dues were deducted pursuant to the employees' valid, unexpired, and unrevoked checkoff authorizations, or fail to return to the employees dues checked off after the expiration of the collective-bargaining agreement, if the dues were deducted pursuant to employees' checkoff authorizations which had expired or been revoked.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act

WE WILL, on request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL promptly furnish to the Union information pertaining to the costs to be borne by employees under the health plans that we considered proposing during collective bargaining.

WE WILL make all delinquent Welfare and Security Fund contributions on behalf of the unit employees that have not been paid since March 2008, including any additional amounts due the funds.

WE WILL make unit employees whole for any expenses ensuing from our failure to make the required Welfare and Security Fund contributions, with interest.

WE WILL remit to the Union all dues we deducted from the employees' pay pursuant to valid dues-checkoff authorizations prior to the expiration of the collective-bargaining agreement, with interest.

WE WILL remit to the Union, or to the employees, as determined at the compliance stage of this proceeding, all dues we deducted from employees' pay after the expiration of the collective-bargaining agreement, with interest.

RESISTFLAME ACQUISITION CO. F/K/A
RESISTFLAME KIESLING & HESS FINISHING CO.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

RESISTFLAME ACQUISITION COMPANY,
INC. f/k/a RESISTFLAME KIESLING &
HESS FINISHING COMPANY

and

Case 4-CA-36334

UNITE HERE!, PHILADELPHIA JOINT
BOARD, AFL-CIO, CLC

COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

The National Labor Relations Board, herein called the Board, issued its Decision and Order in Case 4-CA-36334 on March 6, 2009 (353 NLRB No. 107), directing Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess Finishing Company, herein called Respondent, inter alia to: (1) make all delinquent contributions (i.e. those that have not been paid on behalf of the employees in the Unit since March 2008) to the Welfare and Security Fund, herein called the Fund, including any additional amounts due the Fund in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979); and (2) remit to UNITE HERE!, Philadelphia Joint Board, AFL-CIO, CLC, herein called the Union, all dues Respondent deducted from Unit employees' pay during the term of the collective bargaining agreement between Respondent and the Union, herein called the Agreement, pursuant to the employees' valid, unexpired and unrevoked dues-checkoff authorizations; and (3) remit to the Union all dues Respondent deducted from Unit employees' pay after the expiration of the Agreement and pursuant to their valid, unexpired and unrevoked dues-checkoff authorizations. The United States Court of Appeals for the Third Circuit entered its Judgment on January 22, 2010, enforcing in full the provisions of the Board's Order. A controversy having arisen concerning the amounts due from Respondent under the terms of the Board's Order; the Regional Director of the National Labor Relations Board for the Fourth Region, hereby issues this Compliance Specification and Notice of Hearing and alleges that the amounts due are as follows:

I. WELFARE & SECURITY FUND CONTRIBUTIONS

1. (a) Respondent's obligation to make Fund contributions is based on Provision 5 of the Agreement and covers the term of the Agreement, from June 1, 2005 through May 31, 2008, and the period after the expiration of the Agreement.

(b) Respondent was required to make Fund contributions consisting of \$77 per week on behalf of each Unit employee who performed at least one hour of work in any given week. Respondent's Fund contributions were due by the 10th day of the month following the month in which the Unit employee performed the work that was the basis for the Fund contribution.

(c) Respondent ceased operations at the facility involved herein in June 2009, and laid off the last Unit employee. Therefore, Fund contributions were due on April 10, 2008 and the 10th day of each consecutive month thereafter until July 10, 2009.

(d) Provision 5 of the Agreement and Article 24 of the Fund's Trust Agreement require that delinquent contributors, such as Respondent, in addition to the regular contributions, pay as liquidated damages an additional 20% of the amount of the Fund contributions.

(e) Respondent is additionally required to pay interest based on its delinquencies. The Fund's established practice has been to seek interest pursuant to 29 U.S.C. §1132(g)(2)(B) and as calculated pursuant to 26 U.S.C. § 6621, and this practice comports with the Board's Order that interest calculations be made in accordance with *Merryweather Optical Co.*, supra.

(f) Respondent must make contributions and pay liquidated damages and interest to the Fund on behalf of Unit employees John Abrams, Edmond Chance, James Diviny, Charles Edwards, Stuart Heiman, Carl Miller, Trevor Moore, George Palmer, Oscar Palmer, Pablo Santos, Bernard Schwartz, Isreal Walthour, and James Woodard.

(g) Fund contributions due on behalf of Unit employees were calculated by multiplying \$77 by the number of weeks in each month during which each Unit employee worked at least one hour. The weeks during which Unit employees performed work were determined by reviewing payroll records furnished by Respondent. Respondent's monthly contribution amounts due on behalf of each Unit employee during the period specified in paragraph 1(c) above were added to calculate the total amount due to the Fund on behalf of each Unit employee.

(h) The liquidated damages due to the Fund from Respondent on behalf of Unit employees were calculated by multiplying the total amount of Fund contributions due by 20%.

(i) The interest due the Fund from Respondent was determined in the manner prescribed by 26 U.S.C. § 6621.

(j) The calculations of the Fund contributions, liquidated damages and interest due the Fund on behalf of Unit employees are set forth in Exhibit A.

II. DUES PAYMENTS

2. (a) The Board's Order requires Respondent to remit to the Union monthly dues that Respondent deducted and withheld from the pay of Unit employees, but failed and refused to remit to the Union during the term of the Agreement and after the expiration of the Agreement.

(b) Prior to March 7, 2009, the Union referred to above in the introductory paragraph was the exclusive collective bargaining representative of the Unit.

(c) On or about March 7, 2009, the day after the Board's Order, the Executive Board of the Philadelphia Joint Board, herein called PJB, voted to disaffiliate from UNITE HERE!.

(d) On or about March 21, 2009 and March 22, 2009, PJB: (1), with other labor organizations, created and became affiliated with Workers United; (2) Workers United affiliated with Service Employees International Union, herein called SEIU; and (3) PJB became PJB, Workers United, SEIU.

(e) At all times since on or about March 22, 2009, PJB, Workers United, SEIU became successor to the Union and has been the exclusive collective bargaining representative of the Unit pursuant to Section 9(a) of the Act.

(f) Based on the facts set forth above in subparagraphs (a) through (e), and to comply with the Board's Order, Respondent must remit all unpaid dues to PJB, Workers United, SEIU.

(g) During the period of time from March 2008 through November 2008, Respondent deducted and withheld dues from the pay of Unit employees without monthly remitting those dues to the Union. During this period of time, all Unit employees had in effect valid, unexpired and unrevoked dues-checkoff authorizations.

(h) Based on a review of payroll records furnished by Respondent, dues in the amount of \$29 per month for those Unit employees actively working for Respondent during any month of the time period from March 2008 through November 2008 were withheld and retained by Respondent, rather than being remitted to the Union. This monthly amount of dues corresponded to the Union's monthly dues assessment schedule.

(i) The total amount of dues withheld from the pay of Unit employees was calculated by multiplying by \$29 the total number of months for each employee working during the time period set forth in subparagraph (h) when Respondent was deducting and withholding dues from the pay of Unit employees without remitting those dues to the Union.

(j) The individual amounts of dues deducted and withheld from the pay of each Unit employees and the total amount of dues withheld from all of the Unit

employees' pay during the period from March 2008 through November 2008, are set forth in Exhibit B.

SUMMARY

3. Summarizing the facts and calculations specified herein, the obligation of Respondent to make whole the Fund and the Union under the Board's Order as described above in Paragraphs 1 and 2 will be fulfilled by payment of the total amounts of contributions, liquidated damages and interest to the Fund set forth in Exhibit A, and by payment to the Union of the total amount of withheld dues set forth in Exhibit B, plus interest calculated in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987) accruing to the date of the payment.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an Answer to the Compliance Specification. The answer must be **received by this office on or before July 16, 2010, or postmarked on or before July 15, 2010.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this office and serve a copy of the Answer on each of the other parties.

The Answer also may be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification of the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two (2) hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such Answer be signed and sworn to by Respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the Answer need to be transmitted to the Regional Office. However, if the electronic version of the Answer to the Compliance Specification is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may not be filed by facsimile transmission.

As to all matters set forth in the Compliance Specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the Answer must state the basis for any disagreement with any allegations that are within Respondent's knowledge, and the Answer must set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no Answer is filed, or if the Answer is filed untimely the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Compliance Specification are true. If the Answer fails to deny allegations of the Compliance Specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the Compliance Specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE that at **11:00 a.m.** on **October 6, 2010**, and on consecutive days thereafter until concluded, a hearing will be conducted in a hearing room of the National Labor Relations Board, Region 4, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Compliance Specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania on this 25th day of June, 2010.

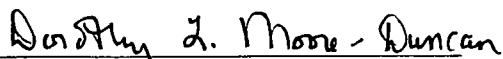

DOROTHY L. MOORE-DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

Exhibit A (Welfare and Security Fund Contributions Owed)

Month	John Abrams	Edmond Chance	James Diviny	Charles Edwards	Stuart Heiman	Carl Miller	Trevor Moore	George Palmer	Oscar Palmer	Pablo Santos	Bernard Schwartz	Isreal Walthour	James Woodard	Total	Interest %	Interest	Liquidated Damages	Total With Interest & Liquidated Damages
Mar-08	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$4,004.00	10.68%	\$427.79	\$800.80	\$5,232.59
Apr-08	\$231.00	\$308.00	\$308.00		\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$3,619.00	9.18%	\$332.37	\$723.80	\$4,675.17
May-08		\$385.00	\$385.00		\$385.00	\$385.00	\$385.00	\$385.00	\$385.00	\$385.00	\$385.00	\$385.00	\$308.00	\$4,158.00	9.18%	\$381.87	\$831.60	\$5,371.47
Jun-08		\$308.00	\$308.00		\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$308.00	\$3,388.00	9.18%	\$311.16	\$677.60	\$4,376.76
Jul-08		\$308.00	\$308.00		\$308.00	\$308.00	\$308.00	\$308.00	\$154.00	\$154.00	\$308.00	\$154.00	\$154.00	\$2,772.00	7.93%	\$219.93	\$554.40	\$3,546.33
Aug-08		\$308.00	\$308.00		\$308.00	\$308.00	\$308.00	\$308.00			\$308.00			\$2,156.00	7.93%	\$171.06	\$431.20	\$2,758.26
Sep-08		\$308.00	\$308.00		\$308.00	\$308.00	\$308.00	\$308.00			\$308.00			\$2,156.00	7.93%	\$171.06	\$431.20	\$2,758.26
Oct-08		\$308.00	\$308.00		\$308.00	\$308.00	\$308.00	\$308.00			\$308.00			\$2,156.00	6.43%	\$138.72	\$431.20	\$2,725.92
Nov-08		\$308.00	\$308.00		\$308.00	\$308.00	\$308.00	\$308.00			\$308.00			\$2,156.00	6.43%	\$138.72	\$431.20	\$2,725.92
Dec-08		\$308.00	\$308.00		\$308.00	\$308.00	\$308.00	\$308.00			\$308.00			\$2,156.00	6.43%	\$138.72	\$431.20	\$2,725.92
Jan-09		\$308.00	\$308.00		\$308.00	\$308.00	\$308.00	\$308.00			\$308.00			\$2,156.00	5.18%	\$111.77	\$431.20	\$2,698.97
Feb-09		\$231.00	\$231.00		\$231.00	\$231.00	\$231.00	\$231.00			\$231.00			\$1,617.00	5.18%	\$83.83	\$323.40	\$2,024.23
Mar-09		\$77.00	\$77.00					\$77.00			\$77.00			\$308.00	5.18%	\$15.97	\$61.60	\$385.57
Apr-09		\$231.00	\$308.00			\$77.00	\$231.00	\$231.00			\$231.00			\$1,309.00	3.93%	\$51.50	\$261.80	\$1,622.30
May-09		\$154.00	\$154.00				\$154.00	\$154.00			\$77.00			\$693.00	3.93%	\$27.26	\$138.60	\$858.86
Jun-09		\$154.00	\$77.00			\$154.00		\$154.00			\$154.00			\$693.00	3.93%	\$27.26	\$138.60	\$858.86
Total	\$539.00	\$4,312.00	\$4,312.00	\$308.00	\$3,696.00	\$3,927.00	\$4,081.00	\$4,312.00	\$1,463.00	\$1,463.00	\$4,235.00	\$1,463.00	\$1,386.00	\$35,497.00		\$2,748.98	\$7,099.40	\$45,345.38

Exhibit B (Dues Owed to the Union)

Month	John Abrams	Edmond Chance	James Diviny	Charles Edwards	Stuart Heiman	Carl Miller	Trevor Moore	George Palmer	Oscar Palmer	Pablo Santos	Bernard Schwartz	Isreal Walthour	James Woodard	Total Dues
Mar-08	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$377.00
Arpil-08	\$29.00	\$29.00	\$29.00		\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$348.00
May-08		\$29.00	\$29.00		\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$319.00
Jun-08		\$29.00	\$29.00		\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$319.00
Jul-08		\$29.00	\$29.00		\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00	\$319.00
Aug-08		\$29.00	\$29.00		\$29.00	\$29.00	\$29.00	\$29.00			\$29.00			\$203.00
Sep-08		\$29.00	\$29.00		\$29.00	\$29.00	\$29.00	\$29.00			\$29.00			\$203.00
Oct-08		\$29.00	\$29.00		\$29.00	\$29.00	\$29.00	\$29.00			\$29.00			\$203.00
Nov-08		\$29.00	\$29.00		\$29.00	\$29.00	\$29.00	\$29.00			\$29.00			\$203.00
Total														\$2,494.00

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

RESISTFLAME ACQUISITION COMPANY, INC. F/K/A
RESISTFLAME KIESLING & HESS FINISHING
COMPANY

and

UNITE HERE PHILADELPHIA JOINT BOARD

Case 4-CA-36334

Date of Mailing: June 25, 2010

AFFIDAVIT OF SERVICE OF: COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid certified mail upon the following persons, addressed to them at the following addresses:

Thomas Applegate, President and CEO, Resistflame Acquisition Company, Inc., f/k/a Resistflame Kiesling & Hess Finishing Company, 300 West Bristol Street, Philadelphia, PA 19140 (C. 7006 0810 0005 5380 1798 RRR)

Thomas Applegate, President and CEO, Resistflame Acquisition Company, Inc., f/k/a Resistflame Kiesling & Hess Finishing Company, 7115 Miami Avenue, Cincinnati, OH 45243 (C. 7006 0810 0005 5380 1781 RRR)

Philadelphia Joint Board, 22 South 22nd Street, Philadelphia, PA 19103 (C. 7006 0810 0005 5380 1774 RRR)

Bernard N. Katz, Esquire, Meranze and Katz, PC, The North American Building, 121 South Broad Street, 13th Floor, Philadelphia, PA 19107 (C. 7006 0810 0005 5380 1767 RRR)

Subscribed and sworn to before me this

25th day of June 2010

Designated Agent

/s/ Rita Messina

NATIONAL LABOR RELATIONS BOARD

7006 0810 0005 5380 1767

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United States Government
NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

Telephone: (215) 597-7601
Fax: (215) 597-7658
E-filing: <http://www.nlrb.gov>

July 16, 2010

Thomas Applegate, CEO
Resistflame Kiesling & Hess
Finishing Company
300 West Bristol Street
Philadelphia, PA 19140

Thomas Applegate, CEO
Resistflame Acquisition Company
7115 Miami Avenue
P.O. Box 43196
Cincinnati, OH 45243
and by email (tom@resistflameco.com)
and by fax (1-513 561 5223)

Re: Resistflame Acquisition Company, Inc.
f/k/a Resistflame Kiesling & Hess Finishing
Company
Case 4-CA-36334

Dear Mr. Applegate:

The Compliance Specification and Notice of Hearing in this matter issued on June 25, 2010. Enclosed please find the portions of the Rules and Regulations of the National Labor Relations Board (NLRB) concerning the obligation of Respondent Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess Finishing Company to file an Answer to the Compliance Specification. Respondent's Answer was due on July 16, 2010, but it has not been received. This is to advise you that, consistent with the NLRB's Rules, if you have not filed an Answer to the Compliance Specification by July 23, 2010 we intend to file a Motion for Default Judgment with the Board.

Very truly yours,

A handwritten signature in black ink, reading "Daniel E. Halevy", is written over a circular stamp.

Daniel E. Halevy
Regional Attorney
(215 597 7615)

Enc. (NLRB Rules, Section 102.56)

deh \H \r04com\04 C Cases\04-CA-036334\Correspondence\LTR 04-CA-36334 resistflame c-spec default judgment letter July 16 2010 doc

EXHIBIT #5

Sec. 102.55 *Contents of compliance specification.*

(a) *Contents of specification with respect to allegations concerning the amount of backpay due.*—With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee, the backpay periods broken down by calendar quarters, the specific figures and basis of computation of gross backpay and interim earnings, the expenses for each quarter, the net backpay due, and any other pertinent information.

(b) *Contents of specification with respect to allegations other than the amount of backpay due.*—With respect to allegations other than the amount of backpay due, the specification shall contain a clear and concise description of the respects in which the respondent has failed to comply with a Board or court order, including the remedial acts claimed to be necessary for compliance by the respondent and, where known, the approximate dates, places, and names of the respondent's agents or other representatives described in the specification.

(c) *Amendments to specification.*—After the issuance of the notice of compliance hearing but prior to the opening of the hearing, the Regional Director may amend the specification. After the opening of the hearing, the specification may be amended upon leave of the administrative law judge or the Board, as the case may be, upon good cause shown.

Sec. 102.56 *Answer to compliance specification.*

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.*—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

Sec. 102.57 *Extension of date of hearing.*—Upon the Regional Director's own motion or upon proper cause shown, the Regional Director issuing the compliance specification and notice of hearing may extend the date of the hearing.

Sec. 102.58 *Withdrawal.*—Any compliance specification and notice of hearing may be withdrawn before the hearing by the Regional Director upon his or her own motion.

Sec. 102.59 *Hearing; posthearing procedure.*—After the issuance of a compliance specification and notice of hearing, the procedures provided in sections 102.24 to 102.51 shall be followed insofar as applicable.



United States Government
NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

Telephone: (215) 597-7601
Fax: (215) 597-7658
E-filing: <http://www.nlrb.gov>

July 16, 2010

Thomas Applegate, CEO
Resistflame Kiesling & Hess
Finishing Company
300 West Bristol Street
Philadelphia, PA 19140


Thomas Applegate, CEO
Resistflame Acquisition Company
7115 Miami Avenue
P.O. Box 43196
Cincinnati, OH 45243
and by email (tom@resistflameco.com)
and by fax (1-513 561 5223)

Re: Resistflame Acquisition Company, Inc.
f/k/a Resistflame Kiesling & Hess Finishing
Company
Case 4-CA-36334

Dear Mr. Applegate:

The Compliance Specification and Notice of Hearing in this matter issued on June 25, 2010. Enclosed please find the portions of the Rules and Regulations of the National Labor Relations Board (NLRB) concerning the obligation of Respondent Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess Finishing Company to file an Answer to the Compliance Specification. Respondent's Answer was due on July 16, 2010, but it has not been received. This is to advise you that, consistent with the NLRB's Rules, if you have not filed an Answer to the Compliance Specification by July 23, 2010 we intend to file a Motion for Default Judgment with the Board.

Very truly yours,


Daniel E. Halevy
Regional Attorney
(215 597 7615)

Enc. (NLRB Rules, Section 102.56)

Sec. 102.55 *Contents of compliance specification.*

(a) *Contents of specification with respect to allegations concerning the amount of backpay due.*—With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee, the backpay periods broken down by calendar quarters, the specific figures and basis of computation of gross backpay and interim earnings, the expenses for each quarter, the net backpay due, and any other pertinent information.

(b) *Contents of specification with respect to allegations other than the amount of backpay due.*—With respect to allegations other than the amount of backpay due, the specification shall contain a clear and concise description of the respects in which the respondent has failed to comply with a Board or court order, including the remedial acts claimed to be necessary for compliance by the respondent and, where known, the approximate dates, places, and names of the respondent's agents or other representatives described in the specification.

(c) *Amendments to specification.*—After the issuance of the notice of compliance hearing but prior to the opening of the hearing, the Regional Director may amend the specification. After the opening of the hearing, the specification may be amended upon leave of the administrative law judge or the Board, as the case may be, upon good cause shown.

Sec. 102.56 *Answer to compliance specification.*

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.*—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

Sec. 102.57 *Extension of date of hearing.*—Upon the Regional Director's own motion or upon proper cause shown, the Regional Director issuing the compliance specification and notice of hearing may extend the date of the hearing.

Sec. 102.58 *Withdrawal.*—Any compliance specification and notice of hearing may be withdrawn before the hearing by the Regional Director upon his or her own motion.

Sec. 102.59 *Hearing; posthearing procedure.*—After the issuance of a compliance specification and notice of hearing, the procedures provided in sections 102.24 to 102.51 shall be followed insofar as applicable.

Halevy, Daniel E.

From: Halevy, Daniel E.
Sent: Friday, July 16, 2010 11:10 AM
To: 'tom@resistflameco.com'
Cc: Thurman, Shane D.; Navarro-Rivera, Margarita; Cialino, Carmen P.
Subject: Compliance Specification, Case 4-CA-36334
Attachments: CBPS.04-CA-036334.Compliance Spec and NOH.pdf

Mr. Applegate,

As promised in our phone conversation of this morning, and as a courtesy, I am attaching a copy of the Compliance Specification in this matter. Your Answer was due today. By the letter we sent to you today, we have advised you of the steps we plan to take if you do not file an Answer to the Compliance Specification by July 23, 2010. Our normal course of action would be to file a Motion for Default Judgment. As we discussed, if you *do* file an Answer that we consider to be insufficient, we may, by a similar Motion, seek to have Board find the allegations of the Compliance Specification to be true without the taking of evidence. We have sent you a copy of Board Rule Section 102.56 that explains this in greater detail.

If you have any questions, please call me or Compliance Officer Shane Thurman (215 597 5354). Mr. Thurman will be in the office on Monday, July 19, 2010.

*Daniel E. Halevy, Regional Attorney
National Labor Relations Board
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106
(t) 215 597-7615
(fax) 215 597-7658
email: daniel.halevy@nrlb.gov*

EXHIBIT #6

7/27/2010